

# Socio-Economic Procurement Guideline - 2.6.G (12/15/99)

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## Last Update: (12/15/99) ABachicha: dal - 2.6.G.0

This guideline has been reformatted for placement on Sandia's External Web site.

### Definitions

The **Small Business Administration (SBA)** is an agency under Congressional mandate to assist U.S. small businesses by helping new or growing businesses meet their financial needs; counseling small firms with problems; offering special assistance to disadvantaged, women-owned and veteran-owned businesses; helping small businesses to secure government contracts; and acting as a special advocate for small business with other federal agencies, with states and

within the private sector.

A **Small Business (SB)** is independently owned and operated and does not exceed the sales threshold and number of employees set by the Small Business Administration (SBA) for the industry in which the business operates, and is not dominant in that industry.

- **Note:** For a more precise definition see Federal Acquisition Regulation (FAR) Subpart 19.001 or the size standards established by the Small Business Administration (SBA) in 13 CFR, Part 121, or call the Supplier Information and Relations Department at SNL/NM, or the Small/Disadvantaged Business Coordinator, at SNL/CA.

A **Small Disadvantaged Business (SDB)** is a small business at least 51 percent owned, controlled and operated by one or more socially and economically disadvantaged individual(s).

- **Controlled** means exercising the power to make policy decisions.
- **Operated** means actively involved in the day-to-day management of the business.
- **Socially and Economically Disadvantaged Individuals** identified in 13 CFR Part 124 include:
  - Black Americans,
  - Hispanic Americans,
  - Native Americans, including American Indians, Eskimos, Aleuts,
  - Native Hawaiians, and
  - Asian-Pacific Americans comprised of U.S. citizens whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, or the Federated States of Micronesia.

A **Women-Owned Business (WOB)** is a small business concern that is at least 51 percent owned, controlled and operated by a woman or women.

- **Controlled** means exercising the power to make policy decisions.
- **Operated** means actively involved in the day-to-day management of the business.

An **8(a) Certified Contractor** is identified by the SBA as a business which is 51 percent owned, controlled and operated by one or more socially and economically disadvantaged individual(s). An 8(a) Contractor has met SBA certification requirements for federal agency set asides.

The SBA certifies each 8(a) firm with an approval letter. The date of the letter is the date of the program certification. Each firm is in the 8(a) program for nine years. The program is divided into two segments: the Developmental Stage (the first four years) and the Transitional Stage (the

last five years).

- **Note:** The most current listing of in state 8(a) certified Contractors may be obtained from Procurement's Supplier Information and Relations Department staff at SNL/NM.
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## **Procedures - 2.6.G.1**

### **Small Business Set-Aside and Solicitation Approval Documentation - 2.6.G.1.a**

When a competitive requirement above \$100,000 will be issued as a solicitation, the SCR is required to send a standard memorandum requesting SB/SDB/WOB sources and a copy of the SOW to Supplier Information and Relations Department staff for review.

The Supplier Information and Relations (SIR) Department or its designee shall make a determination and assign a Standard Industrial Classification (SIC) Code if a Small Business set-aside is appropriate. The guidelines for this determination are in the section of this guideline entitled "Small Business Set-Asides." If the Small/Disadvantaged Business Coordinator decides that a small business set-aside is not appropriate for the particular procurement, they will insure that small, small disadvantaged and woman-owned businesses are provided maximum opportunity to compete for the requirement. The Solicitation Approval documentation shall cover this decision. If the buying department has been delegated authority to review the requirement for the SRC, the SCR sends a standard memorandum and a copy of the SOW to the delegated individual for set-aside determinations. A copy of the standard memorandum is to be retained in the contract file. The Solicitation Approval documentation shall cover this decision.

### **Solicitation Worksheet - 2.6.G.1.b**

The SD/SCMD will indicate on the solicitation worksheet whether or not this procurement qualifies for a Preference Program set-aside. This will be done by checking the appropriate block in the Preference Program heading. This ensures that the appropriate notice will be printed in the solicitation.

### **PAS/PAD Documentation - 2.6.G.1.c**

For competitive procurements above \$25,000, the SCR shall document the file and specifically address:

- why SB set-aside was not feasible,
- whether responsive Contractors are large, SB/SDB, or WOB,
- whether the award was made to large, SB/SDB, or WOB,

- why SB/SDB, or WOB were not solicited, or
- why a SB/SDB, or WOB did not receive the award when solicited.

## **Order of Preference - 2.6.G.1.d**

When one or more offers received are equal in price and/or other factors to be considered as the basis for award, the procurement award shall be made in the following order of preference:

- Small Disadvantaged Business/(8a),
- Women-Owned Business,
- Other small businesses, and
- Large businesses.

## **SB/SDB and WOB Self-Certification - 2.6.G.1.e**

The SCR may accept self certification by all business types except 8(a). A copy of the SBA 8(a) certification letter is required for 8(a) certification. If there is reasonable doubt, the SCR may refer the issue to the SRC or designee for determination.

## **Active Contractor Directory - 2.6.G.1.f**

The Oracle Procurement System maintains the ACD which, in addition to other things, classifies businesses as:

- large,
- small,
- small disadvantaged,
- women-owned, and
- 8(a) certified.

## **Reports - 2.6.G.1.g**

The Information Systems and Technology Department composes, publishes, and distributes corporate reports to DOE and SNL management. These reports include, but are not limited to, the following:

- Socio-economic Report,
- Purchasing Goals and Accomplishments,
- Small Business Administration Report, and

- Type of Business Report.
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## **Socio-Economic Clauses - 2.6.G.2**

### **Procurements >\$10,000 - 2.6.G.2.a**

This clause applies to solicitations, POs and contracts exceeding \$10,000 and is automatically included or referenced as part of the Section II Standard Terms and Conditions.

- Utilization of Small Business Concerns and Small Disadvantaged Business Concerns

### **Procurements >\$25,000 - 2.6.G.2.b**

This clause applies to solicitations and contracts exceeding \$25,000 and is automatically included or references part of the Section II Standard Terms and Conditions.

- Utilization of Labor Surplus Area Concerns (**Exception:** Construction and Purchase Orders)

### **Procurements Action >\$500,000 (\$1 million for Construction) - 2.6.G.2.c**

The following clause is to be included in the solicitation, contract or revision if it exceeds \$500,000 (\$1 million for construction) unless the award or solicitation is awarded to a small business or approved by the Small Business Coordinator.

Solicitation:

- FAR 52.219-9 Small Business Subcontracting, and
- SC 425-SBS - Small Business Subcontracting Certification.

Contract/Revision:

- FAR 52.219-9 - Small Business Subcontracting Plan.

**Note:** Incorporate clause SC 425-SBS in Section I of the contract. FAR Clause 52.219-9 is automatically included via the Section II boilerplates.

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## **Supplier Relations Liaison Officer -**

## 2.6.G.3

In accordance with DOE contract, SNL shall appoint a Liaison Officer to administer its small and small disadvantaged program. The appointed SNL Liaison Officer is the Manager of the Supplier Information and Relations Department.

### Duties and Responsibilities - 2.6.G.3.a

Some of the duties and responsibilities of the SNL Liaison Officer are:

- Maintains liaison with the Government and DOE Contractors in matters involving SB, SDB, WOB, and 8(a) concerns.
- Administers SNL's SB, SDB, and WOB, business subcontracting programs.
- Maintains directories, databases, and other listings that identify SB, SDB, and WOB.
- Assists the buying staff in locating SB, SDB, and WOB from which quotations/proposals may be solicited.
- Participates in establishing goals and objectives for awards to SB, SDB, and WOB.. Monitors and evaluates progress on a continuing basis to assure effort is being made to meet these objectives.
- Administers goals and Sandia Contracting Representative (SCR) recognition programs for SB, SDB, and WOB.
- Maintains records of performance for audit purposes and keeps the procurement and Logistics Center informed on changes in Government programs and performance toward meeting goals.
- Administers the Small Business Set-Aside programs.
- Participates in Rio Grande Minority Purchasing Council activity and related community affairs. Participates in trade fairs and business opportunity conferences. Counsels firms on doing business with SNL. Interviews and, when appropriate, visits newly located businesses.

The Small/Disadvantaged Business Coordinator, SNL/CA, represents the SNL Liaison Officer by:

- participating in trade fairs and business opportunity conferences,
- counseling firms on doing business with SNL,
- interviewing and, when appropriate, visiting newly located businesses,
- cooperating with DOE/AL Contracting Officer in any studies and surveys of SB, SDB, WOB, or 8(a) concerns,

- maintaining a list of items sold by the Blind and Severely Handicapped,
  - conducting surveys of manufacturing and laboratory facilities of prospective Contractors as appropriate, and
  - determining the adequacy of subcontracting plans submitted by Contractors and approves plans prior to award of a contract.
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## Small Business Set-Aside Guidelines - 2.6.G.4

In accordance with the subcontracting plan contained in the prime contract, SNL will set aside subcontracts for SB when it is expected that offers will be obtained from a sufficient number of responsible SB concerns to assure reasonable prices, quality, and acceptable delivery.

### Rules - 2.6.G.4.a

**Small Business Small Purchase Set-Asides** - Purchases of \$25,000 or less, awarded through small purchase procedures, will be reserved exclusively for SB where there is a reasonable expectation that quotations, competitive with respect to price, quality, and delivery will be obtained from SB.

**Nonmanufacturer's Rule** - For purchases exceeding the small purchase limit, products furnished must be domestically manufactured by a SB unless:

- The products are in a class for which the SBA has specifically waived this rule (because there are no small business manufacturers in the federal market) and the products are furnished by a regular dealer, primarily engaged in the wholesale or retail trade. A small nonmanufacturer responding to SB small purchase set-aside or a set-aside where the nonmanufacturer's rule has been waived, may furnish any domestically produced or manufactured product.

**Construction** - Construction subcontracts estimated to cost \$3 million or less will be set-aside for SB concerns provided, however, that the SCR can reasonably expect to receive two or more responsive offers. When in the judgment of the SCR a construction subcontract of \$3 million or less is unsuitable for a SB set-aside, the approval of the SB Liaison Officer/designee is required prior to soliciting the offers on an unrestricted basis.

Construction subcontracts estimated to be greater than \$3 million may be set-aside for SB at the discretion of the SCR.

**Use of Set-Asides and Standard Clauses** - The following table illustrates the appropriate solicitation clauses used for set-asides.

## **Set-Asides**

Small Business >\$25,000

## **Standard Clauses**

- SC 423-SB - Notice of Small Business Set-Aside
  - SC 426-KSC - SIC Code and Small/Small Disadvantaged/Women-Owned Businesses Size Standard
  - SC 427-SN - Small Business Concern Representation
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## **Guidelines for 8(A) Pilot Program - 2.6.G.5**

DOE has established an 8(a) Pilot Program whereby SNL is authorized to make competitive or noncompetitive awards (up to \$3 million) to SBA 8(a) certified firms. (Construction contracts for the 8(a) pilot program must be placed on a competitive basis with two or more 8(a) firms.) Program participation must be at fair market price with no premium to be paid to the participating (8a) company. The requirement for sole-source justification does not apply to awards made under the 8(a) pilot program, but a reference must be made in the Solicitation Approval and the PAS that the contract is an 8(a) pilot program set-aside.

The Supplier Information and Relations Department will supply each SCR with a listing and profile of all current NM and CA 8(a) firms on a quarterly basis. Quarterly reports of awards made under the pilot program will be submitted to DOE/AL and DOE/OSDBU by the Supplier Information and Relations Department.

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## **Subcontracting Plan Procedures - 2.6.G.6**

The following policy and procedural guidance is provided to the SNL Liaison Officer in making determinations as to the acceptability of a Small Business and Small Disadvantaged Business Subcontracting Plan. These requirements are in accordance with amendments to the Small Business Act, the Small Business Investment Act of 1958 and Pub L. 95-507, which now requires a Subcontracting Plan in contracts or contract modifications awarded to a large business concerns which individually are expected to exceed \$500,000 (\$1 million for construction).

FAR 52.219-9 - Small Business Subcontracting Plan, Section II, (d), specifies the requirements that must be included in the Contractor's subcontracting plan. In making determinations concerning the acceptability of proposed subcontracting plans, the following action should be taken:



- Obtain and review information from all appropriate sources, including the prospective Contractor and the SCR, concerning the apparent successful Contractor's historical performance and achievements in placing subcontracts for the same or similar products or services with SB/SDB subcontractors--if this information is not available for a specific product or service, the Contractor's past performance and achievements in the placement of total subcontract awards to SB/SDB subcontractors shall be examined.
- Evaluate the anticipated potential for subcontracting to SB/SDB considering the make-or-buy policies or programs of the apparent successful Contractor, the nature of the products or services to be subcontracted, and the known availability of SB/SDB concerns in the geographical area where the work will be performed.
- Advise the apparent successful Contractor of:
  - the availability of the sources of information on potential SB/SDB subcontractors, and
  - the names of any known potential SB/SDB subcontract sources.
- If the proposed goals are questionable, the Contractor should be advised of the available sources of information which can be used and the potential SB/SDB subcontract sources which can be considered to ensure development of realistic and acceptable goals.
- Negotiate subcontracting goals at a level which represents a good faith, aggressive, and comprehensive effort of the apparent successful Contractor to use to the maximum practicable extent SB/SDB subcontractors after appropriate consideration of their price, technical capability, and other pertinent factors. No goals will be negotiated upwards if it is apparent that higher goals will result in significant increased costs to SNL or the Government or will seriously impede acquisition objectives.
- Appropriate revisions to agreed subcontracting percentage and dollar goals shall be negotiated if any subsequent revisions to the contract will have a major impact on the original planned volume or type of subcontracting effort.
- Subcontracting plans are mandatory on all contracts and revisions over \$500,000 awarded to large business and universities. The subcontracting plan must be approved by the Small Business Coordinator prior to award of the contract/revision. Approval must also be obtained from the Small Business Coordinator prior to the award of any contract or revision where the Contractor has indicated that no subcontracting opportunities or no subcontracting plan exists.

## **Annual Plan - 2.6.G.6.a**

If applicable, where the Contractor is a manufacturer of commercial goods and a master subcontracting plan has been approved, the SCR must:

- first, obtain a copy of the established company or division-wide annual plan,
- second, forward the document to the SNL Liaison Officer, and

- third, obtain approval before placement.

## Failure to Comply - 2.6.G.6.b

The failure of the Contractor or subcontractor to comply in good faith with the clause entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns," or an approved plan required by this provision shall be a material breach of the contract.

If such a breach of contract occurs, the SCR shall review the available facts with the SNL Liaison Officer and Legal to determine appropriate action.

Such action may include termination of the contract pursuant to the termination for default clause, reduction in contract price, negotiation of a revised subcontracting plan to correct deficiencies, or other measures deemed appropriate. In determining the proper action, SNL shall consider:

- the reasons attributed to the failure to comply in good faith,
  - SNL's need for the contract deliverables, and
  - the impact a proposed action may have on existing small and disadvantaged subcontractors.
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## References - 2.6.G.7

- FAR 52.219-8 - Small Business Subcontracting Plan
  - SC 423-SB - Notice of Total Small Business Set-Aside
  - SC 425-SBS - Small Business Subcontracting Certification
  - SC 426-KSC - SIC Code and Small/Small Disadvantaged/Women-Owned Businesses Size Standard
  - SC 427-SN - Small Business Concern Representation
  - SC 429-EA - Notice of Set-Aside for Eligible SBA Certified 8(a) Business Concerns
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[Adolph Bachicha](#)



[Karen Archibeque](#)

